

08 Civ. 10807

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5/19/09

BENJAMIN M. GAMORAN, individually, derivatively and on behalf
of all others similarly situated,

Plaintiff,

- against -

NEUBERGER BERMAN MANAGEMENT LLC, NEUBERGER BERMAN,
LLC, BENJAMIN SEGAL, MILU E. KOMER, PETER E. SUNDMAN,
JACK L. RIVKIN, JOHN CANNON, FAITH COLISH, MARTHA C. GOSS,
C. ANNE HARVEY, ROBERT A. KAVESH, HOWARD A. MILEAF,
EDWARD I. O'BRIEN, WILLIAM E. RULON, CORNELIUS T. RYAN,
TOM D. SEIP, CANDACE L. STRAIGHT, AND PETER P. TRAPP,

Defendants,

- and -

NEUBERGER BERMAN EQUITY FUNDS d/b/a NEUBERGER BERMAN
INTERNATIONAL FUND,

Nominal Defendant.

08 Civ. 10807 (DLC)

STIPULATION AND
(PROPOSED) ORDER FOR
VOLUNTARY DISMISSAL

IT IS HEREBY STIPULATED by and among all parties that:

1. Effective upon the entry of an order of this Court approving this stipulation, this action shall be dismissed as to all defendants and all claims pursuant to Fed. R. Civ. P. 41(a)(1)(A), upon the following terms and conditions.
2. The dismissal shall be without prejudice.
3. All parties shall bear their own costs.
4. Reference is made to this Court's Opinion and Order dated April 2, 2009 in *McBrearty v. Vanguard*, 08 Civ. 7650 (DLC) ("*McBrearty*"). Plaintiffs in *McBrearty* have

appealed to the United States Court of Appeals for the Second Circuit, and the appeal has been assigned the docket number 09-1445-cv.

5. If plaintiff in this action commences a new action subsequent to the dismissal of this action based on the same transactions and occurrences or series of transactions and occurrences that are the subject of the complaint in this action, and if such new action is commenced sooner than the date which is six (6) months from (i) the issuance of the mandate of the U.S. Court of Appeals in *McBrearty* or (ii) if the *McBrearty* appeal is terminated without any mandate, from the issuance of the order terminating that appeal (the "Measurement Date"), then:

- a. The date of commencement of the new action shall relate back to the date of commencement of this action; and
- b. The operative date for determining the adequacy of plaintiff's compliance with any demand or similar requirement for maintaining the action as a derivative action shall relate back to the date of commencement of this action; and
- c. Service of process on defendants and nominal defendants who were named in the complaint in this action in the subsequent action shall be made by personal delivery of the summons and complaint to the undersigned defense counsel, and such service shall be deemed good and sufficient for all purposes, but without prejudice to any defense any defendant or nominal defendant may have based on lack of personal jurisdiction, except that the operative date for determining personal jurisdiction shall relate back to the date of commencement of this action; and

d. Any period of limitations (including laches) applicable to the claims asserted in the complaint in this action shall be tolled from the date this action was commenced until the earlier of (i) the Measurement Date or (ii) April 27, 2011.

6. Nothing in this stipulation shall have any impact on any defendant or nominal defendant's (i) ability to argue any defenses to any claims relating to the allegations in the complaint in this action (irrespective of the forum in which such claims might be asserted) or
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(ii) any party's ability to assert subject matter jurisdiction or the lack thereof in any court in which such claims might be litigated.

Dated: May 4, 2009

HANLY CONROY BIERSTEIN
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- and -

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*Attorney for Defendants and Nominal
Defendants*

*The Clerk of Court
shall close the case.*

SO ORDERED:

Thomas I. Sheridan, III
U. S. D. J.
May 19, 2009